

Opinion No.
1261

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CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

CUSTOMERS PARKING, INC., et al. *
Petitioners *
v. * Tax Docket 3253-83
DISTRICT OF COLUMBIA *
Respondent *

ORDER

This matter came before the Court for trial. Petitioners, Customers Parking, Inc., Downtown Parking Corporation, L. B. Doggett, Jr., and Gladys Doggett, together the owners of 22 lots in Square 375, challenged the assessment for Tax Year 1983. Respondent, District of Columbia, valued the subject property for tax assessment purposes for Tax Year 1983 at \$10,086,906. Petitioners appealed to the Board of Equalization and Review which sustained the assessment. Petitioners paid the tax of \$314,851.12 and timely filed this appeal. This Court has jurisdiction over this appeal pursuant to D.C. Code §§47-825 and 3303 (1981 ed.).

FINDINGS OF FACT

1. This action was brought by Petitioners Customers Parking, Inc., Downtown Parking, Inc., and L. B. Doggett, Jr., and Gladys Doggett, owners of 22 lots in Square 375.
2. The subject property as set forth in Petitioners' Petition consisted of the following lots in Square 375 in the District of Columbia: Lots 67, 70, 71, 89, 90, 91, 92, 809, 810 with premises known as 919-941 G Place, N.W., and the improvements thereon; lots 805, 29 and 30 known as 906 H Street, N.W., and 742-744 9th Street, N.W., and the improvements thereon; Lots 88, 72, 106, 107, 116, 117, 804, 819, 820 and 821 with premises known as 719 10th Street, N.W., 929-931 G Place, N.W. and 914-920 H Street, N.W.

3. The total assessment of the subject property for Tax Year 1983 was increased to \$10,086,906 by notice of assessment dated July 23, 1982, made pursuant to D.C. Code §47-829 (1981 ed.).

4. The appeal to the Board of Equalization and Review in Petition No. 83-3781 was timely filed on September 30, 1982. Oral hearing was held before the Board of Equalization and Review on October 14, 1982 and by decision dated October 14, 1982, the Board informed Petitioners of its decision to sustain the assessment.

5. The taxes and assessment contested in Petitioners' Petition were real estate taxes and assessment for Tax Year 1983 in the following amounts:

Total Assessment	\$10,086,906
Total Taxes:	\$ 214,851.10

6. The Tax Year 1983 taxes in the amount of \$214,851.10 have been paid in full. First half taxes in the amount of \$107,425.55 were timely paid on September 15, 1982. Second half taxes in the amount of \$107,425.55 were timely paid on or before March 31, 1983.

7. Respondent's Motion for Partial Summary Judgment was filed on February 8, 1984 and Petitioners' Opposition thereto was filed on February 27, 1984. The parties submitted subsequent pleadings in support of both parties' filings and an oral hearing was held on Respondent's Motion on March 19, 1984.

8. By Order filed March 30, 1984 this Court granted Respondent's Motion for Partial Summary Judgment and dismissed the portion of Petitioners' Petition pertaining to 21 of the 22 lots in Square 375, leaving only lot 88 in Square 375. Petitioners' Motion for Reconsideration of the Court's March 30, 1984 Order was denied.

9. Petitioners appealed the Court's grant of partial summary judgment to the District of Columbia Court of Appeals, Appeal No. 84-929, on July 6, 1984. Briefs were filed by the parties and, pursuant to the Court's Order to Show Cause, by Order filed May 24, 1985, Petitioners' appeal was dismissed and the case remanded to this Court.

10. At trial, Petitioners moved to try all 22 lots as an economic entity consistent with prior motions in this case. In support thereof Petitioners proffered (1) an Affidavit by Mr. Aguglia, (2) a transcript of the Board hearing, and (3) a complete set of stipulations. Petitioners' motion was denied and the proffered documents were not admitted into evidence.

11. The subject 22 lots contain 47,390 square feet of land which contains frontage on G Place, H Street and 10th Street, N.W. The site is located in an area zoned C-4, with a nominal "Floor Area Ratio" (FAR) of 8.5. If lot 88 is not included then the remaining lots located on G Place are restricted to a FAR of 4.8.

12. Lot 88 is improved with a two-story office building originally built in 1913 and renovated in 1982. The building is owner-occupied and is used as the offices of the Petitioners herein. The remaining lots are improved only with asphalt and are used in their entirety as parking lots.

13. Petitioners called the assessor responsible for both the Tax Year 1983 annual and annual supplemental assessments of the subject property, Mr. Edson. Mr. Edson testified that the Tax Year 1983 annual supplemental assessment for lot 88 was \$585,000, allocated as \$484,500 to land and \$100,500 to improvements. As to lot 88, Mr. Edson testified that he had taken the Tax Year 1983 annual assessment of lot 88 and added to it \$60,000 for "permit work." Mr. Edson did not state that he had placed the market value on lot 88 as of July 1,

1982, but only that he had added a number which he called "permit work" to the Tax Year 1983 annual assessment. Mr. Edson could give no basis for this mere addition nor any suggestion that the total arrived at when the \$60,000 was added yielded the market value of lot 88. Mr. Edson also testified that he had always assessed lot 88 as part of the total 22 lots located in Square 375 and that he did so for both the Tax Year 1983 annual and annual supplemental assessments.

14. Mr. Edson supported his land value through the use of recent land sales. Each was within a limited distance from the property and indicated that vacant land in the area was very marketable, usually as part of an assemblage, at values far in excess of the \$190 per square foot he had assigned to the property.

15. William Harps, the petitioners' expert, like Mr. Edson, agreed that land sales in the area were largely for assemblage and that the building had only an interim use. He however, reached a very different value. He concluded that any purchaser would be acquiring the property for its income potential. He then hypothecated an income, capitalized it and reached a total property value of \$193,000. Though the property was zoned C-4 with an 8.5 F.A.R., he assigned only a 2 F.A.R. Since he had valued a point of F.A.R. at \$17.65 as compared to the assessor's \$22.35 per point, his 2 F.A.R. reduced the land value to \$35.30 (2 x 17.65) per square foot compared to the assessor's \$190 (22.35 x 8.5) per square foot. Subtracting the rounded land value, he derived a building value of \$103,000 or more than the assessor's \$100,500. The wide difference in the parties' value, therefore results from the varying assumption about the probable future of the building.

CONCLUSIONS OF LAW

Superior Court review of a tax assessment is de novo, necessitating competent evidence to prove the matters at issue. Wyner v. District of Columbia, 411 A.2d 59 (D.C. App. 1980). The assessed value of property for real property taxation purposes is the "estimated market value" of the property. D.C. Code §47-820(a)(1981 ed.). In the instant case, the assessment being challenged by Petitioners is the Tax Year 1983 annual and annual supplemental assessments. For a Tax Year 1983 annual supplemental assessment the proper value of the subject property is its "estimated market value" as of July 1, 1982. See D.C. Code, §47-829 (1981 ed.); Cathconn Associates Limited Partnership v. District of Columbia, 107 D.W.L.R. 957 (D.C. Super. Ct., Tax. Div., Tax Docket No. 2424, Apr. 27, 1979, Penn, J.) (a new assessment made under the annual supplemental assessment statute must be based upon the fair market value just as in the case of an annual assessment).

The assessment here at issue is the Tax Year 1983 annual and annual supplemental assessments as to lot 88 in Square 375, as sustained by the Board of Equalization and Review, in the amount of \$585,000. The Court has jurisdiction under D.C. Code §11-1101, 47-3303 and 47-3304 (1981 ed.). Petitioners contend that the assessment was arbitrary and excessive in violation of D.C. Code §47-801, et seq. (1981 ed.) and the due process clause of the United States Constitution. Because statutory and factual considerations are sufficient to resolve this case, the Court need not reach the Constitutional issue.

Petitioner bears the burden of proof to establish respondent's assessments are arbitrary, excessive or otherwise erroneous and unlawful. Sup. Ct. Tax R. 11(d).

See Also Wyner at 60; District of Columbia v. Burlington Apartment, 375 A.2d 1052, 1057 (D.C. 1977) (en banc).

Petitioner cannot meet its burden by merely presenting an alternative value arrived at by using a different approach to valuation as a basis for invalidation of an assessment. Instead, petitioner must show respondent's assessed value was erroneously determined.

Petitioner has failed to establish respondent's annual assessment for Tax Year 1983 was erroneously determined. The Court finds petitioner has however, met its burden of proof with respect to respondent's annual supplemental assessment for Tax Year 1983 as arbitrary and capricious and thus invalid and void as a matter of law. Therefore the Court sustains respondent's annual assessment for lot 88 at a value of \$525,000, allocated as \$484,500 to land and \$40,500 to improvement. Compare Brisker vs. District of Columbia, 510 A.2d 1037, (D.C. App. 1986) (Trial Court's cancellation of an assessment thus allowing assessment for previous year to remain in force until proper valuation was conducted, affirmed).

For an annual supplemental assessment, the proper value of the subject property is its "estimated value" as of July 1st. See D.C. Code §47-829 (1981 ed.). Estimated market value is defined as the price a willing buyer would pay a willing seller, neither being in a position to take advantage of the exigencies of the other. D.C. Code §47-802(4) (1981 ed.).

Respondent's assessor testified at trial that for the Tax Year 1983 annual supplemental assessment, he merely added a cost he assumed for changes made in the improvements located on lot 88 rather than valuing the property anew.

Respondent presented no evidence that the Tax Year 1983 annual supplemental assessment was the fair market value of lot 88 either within or without the economic entity consisting of the 22 lots. Thus, respondents annual supplemental assessment reflecting an increase of \$60,000 for improvements to lot 88 is arbitrary, capricious and improper.

The Court is satisfied respondent's annual assessment for lot 88 at a value of \$525,000, was lawfully determined and represents the subject property's fair market value. Although the Court considers only lot 88 for purposes of this appeal, the assemblage value of lot 88 along with the other twenty-one (21) lots owned by petitioner, must be properly viewed in arriving at its true fair market value, since the facts here are that petitioner owns all the lots.

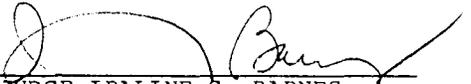
Mr. Edson's land sales made clear that his \$190 per square foot was conservative and appropriate for C-4 ground with a 8.5 F.A.R. development potential. In making such calculations, he implicitly rejected the income approach and the notion advanced by petitioner, that lot 88 is limited to its existing use. Mr. Edson correctly viewed the present use as an interim use with the subject property continuing to appreciate as neighboring properties are purchased and assembled for substantially larger developments.

The Court finds that the annual supplemental assessment for lot 88 for Tax Year 1983 was arbitrary, capricious, and improper and therefore invalid. Thus, the assessment value of lot 88 as of July 1, 1982 should be reduced to the value originally proposed by the annual assessment in the amount of \$525,000, of which \$484,500 is allocated to the land and \$40,500 is allocated to the improvements.

WHEREFORE, it is this 3rd day of August, 1987,

ORDERED, that the Respondent shall modify the assessment record card for lot 88 in Square 375 to reflect the value of \$525,000 for Tax Year 1983, of which \$484,500 shall be allocated to the land and \$40,500 shall be allocated to the improvements and shall refund to Petitioners, with interest from the dates of payment, the excess taxes which have been unlawfully collected for Tax Year 1983; and it is

FURTHER ORDERED that the Petitioners present a proposed order for refund, with interest from the dates of payment of the tax, no later than ten days from the date this Order is signed.


JUDGE IRALINE G. BARNES

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